

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Doris J. Pippert, as the Personal	)	Case No.
Representative of the Estate of Robert A.)	
Pippert, Deceased,	)	Judge
)	
Plaintiff,	)	PETITION FOR REMOVAL ON
	)	BEHALF OF DEFENDANTS LIFE
vs.	)	CARE CENTER OF ELYRIA, LORAIN
	)	MEDICAL INVESTORS LIMITED
Life Care Center of Elyria, et al.,	)	PARTNERSHIP, FORREST PRESETON,
	)	LIFE CARE CENTERS OF AMERICA,
Defendants.	)	AND LIFE CARE CENTERS OF
	)	AMERICA, INC.

TO THE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Pursuant to 28 U.S.C. §§1441 and 1446, Defendants Life Care Center of Elyria, Lorain Medical Investors Limited Partnership, Forrest Preston, Life Care Centers of America, and Life Care Centers of America, Inc. (collectively “Defendants”), hereby file this petition for removal of a certain action pending in the Court of Common Pleas, Lorain County, Ohio. The grounds for removal are as follows:

1. Life Care Center of Elyria, Lorain Medical Investors Limited Partnership, Forrest Preston, Life Care Centers of America, and Life Care Centers of America, Inc. have been named as Defendants in the action titled *Doris J. Pippert, as the Personal Representative of the Estate of Robert A. Pippert v. Life Care Center of Elyria, et al.*, Case No. 18CV194294, pending in the Court of Common Pleas, Lorain County, Ohio.

2. Lorain Medical Investors Limited Partnership currently and at all times relevant herein, is a limited partnership organized under the laws of the State of Tennessee with its principal place of business located at 3570 Keith Street N.W., Cleveland, Tennessee 37312. (See

Filing with the Tennessee Secretary of State and Filing with the Ohio Secretary of State listing Lorain Medical Investors Limited Partnership as a Foreign Limited Partnership with its jurisdiction of formation as Tennessee, attached as Exhibit A). Lorain Medical Investors Limited Partnership is not organized in the State of Ohio, does not have its principal place of business in Ohio, and was not a citizen of Ohio either at the time of commencement of this lawsuit, the filing of the Complaint, or removal of this action. (Exhibit A). Lorain Medical Investors Limited Partnership is comprised of a single limited partner, Forrest L. Preston, and a single general partner, Lorain Medical, Inc.

a) Forrest L. Preston is also a named Defendant and is currently and at all times relevant herein a citizen of and is domiciled in the State of Tennessee. Forrest Preston is not domiciled in Ohio nor is he a resident or a citizen of the State of Ohio.

b) Lorain Medical, Inc. currently and at all times relevant herein is a corporation incorporated under the laws of the State of Tennessee with its principal place of business located at 3570 Keith Street N.W., Cleveland, Tennessee 37312. (See Filing with the Tennessee Secretary of State and Filing with Ohio Secretary of State listing Lorain Medical, Inc. as a Foreign Corporation with its jurisdiction of formation as Tennessee, attached as Exhibit B). Lorain Medical, Inc. is not organized in the State of Ohio, does not have its principal place of business in Ohio, and was not a citizen of Ohio either at the time of commencement of this lawsuit, the filing of the Complaint, or removal of this action. (Exhibit B).

3. Life Care Centers of America, Inc. currently and at all times relevant herein, is a corporation incorporated under the laws of the State of Tennessee with its principal place of

business located at 3570 Keith Street N.W., Cleveland, Tennessee 37312. (See Filing with the Tennessee Secretary of State and Filing with the Ohio Secretary of State listing Life Care Centers of America, Inc. as a Foreign Corporation with its jurisdiction of formation as Tennessee, attached as Exhibit C). Life Care Centers of America, Inc. is not incorporated in the State of Ohio, does not have a principal place of business in Ohio, and was not a citizen of Ohio either at the time of commencement of this lawsuit, the filing of the Complaint, or removal of this action. (Exhibit C).

4. Plaintiff has also named “Life Care Center of Elyria” as a defendant in this case with an address of 1212 South Abbe Road, Elyria, Ohio 44035. “Life Care Center of Elyria” is not a viable, actual, or real entity but merely a “dba” name for Lorain Medical Investors Limited Partnership. As stated above, Lorain Medical Investors Limited Partnership is a limited partnership organized under the laws of the State of Tennessee with its principal place of business in Tennessee.

5. Plaintiff has also named “Life Care Centers of America” as a defendant in this case with an address of 3570 Keith Street, N.W., Cleveland, Tennessee 37312. “Life Care Centers of America” is not a viable, actual, or real entity but merely a “dba” name for Life Care Centers of America, Inc. As stated above, Life Care Centers of America, Inc. is a corporation organized under the laws of the State of Tennessee with its principal place of business in the State of Tennessee.

6. The only other defendants identified by Plaintiffs in this case are “John Doe 1 – 10.” Pursuant to 28 U.S.C. § 1441 (a), the citizenship of defendants sued under fictitious names shall be disregarded for purposes of removal under Chapter 28. *See, e.g., Staybrook v. Verizon Wireless Services, LLC*, Case No. 1:06cv2049, 2007 U.S. Dist. LEXIS 38718, AT *7-8

(N.D. Ohio May 29, 2007); *In Re Ford Motor Co. Crown Victoria Police Interceptor Products Liab. Litig.*, Case No. 1:02cv15000, 2004 U.S. Dist. LEXIS 29971, at *45-46 (N.D. Ohio May 19, 2004).

7. Plaintiff Doris J. Pippert, as the Personal Representative of the Estate of Robert A. Pippert, is a resident of and is domiciled in the state of Ohio according to the Complaint.

8. On January 19, 2018, Plaintiff Doris J. Pippert filed this action in the Court of Common Pleas, Lorain County, Ohio, which was commenced on January 25, 2018, when service was perfected on Defendants Lorain Medical Investors Limited Partnership and Life Care Center of Elyria. (See copy of Docket from Court of Common Pleas, Lorain County, Ohio, attached as Exhibit D). Defendants Life Care Centers of America, Inc. was later served on January 29, 2018. (Exhibit D). Defendants Lorain Medical Investors Limited Partnership and Life Care Centers of America, Inc. attach copies of the Summons and Complaint served upon them. (Exhibits E and F, respectively). Forrest Preston was served on February 1, 2018. (Exhibit D). Life Care Centers of America was served on February 7, 2018. (Exhibit D). A copy of the Summons and Complaint served upon Forrest L. Preston and Life Care Centers of America is attached hereto as Exhibit G and H respectively.

9. Plaintiff's Complaint is one of complete diversity amongst the parties. Complete diversity existed at the time of the filing and commencement of this action, as well as at the time of removal to the United States District Court for the Northern District of Ohio.

10. The amount in controversy of this matter exceeds \$75,000.00. Plaintiff's complaint alleges claims for negligence/malpractice, wrongful death, violation of the Ohio Nursing Home Patients' Bill of Rights and punitive damages.

11. This action is removable to this Court pursuant to 28 U.S.C. §1441(a) in that this action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a)(1) as follows:

- a) the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs;
- b) Plaintiff Doris J. Pippert, as the Personal Representative of the Estate of Robert A. Pippert is and at all relevant times herein was a citizen of Ohio residing at 443 Elyria Avenue, Amherst, Ohio 44001; and
- c) The Defendants are all citizens and or residents of the State of Tennessee;
- d) All Defendants consent to removal pursuant to 28 U.S.C. §1446(b)(2)(A).
- e) this notice is filed within thirty (30) days after receipt by Defendant Lorain Medical Investors Limited Partnership and Life Care Center of Elyria of the Summons and Complaint on January 25, 2018, and is filed within one year of the commencement of this action as required by 28 U.S.C. §1446(b)(2)(B).

13. The Court of Common Pleas, Lorain County, Ohio filed a Court Order on February 22, 2018, extending the time-period for Defendants to file an Answer until twenty-eight (28) days after Plaintiff files an Affidavit of Merit pursuant to Ohio Rule of Civil Procedure 10(D)(2).

14. Written notice of the filing of this Petition for Removal, together with a copy of the Petition for Removal, has been given promptly to Plaintiff's counsel and filed with the Clerk of Court of Common Pleas, Lorain County, Ohio, as required by 28 U.S.C. §1446(d).

WHEREFORE, Defendants Life Care Center of Elyria, Lorain Medical Investors Limited Partnership, Forrest Preston, Life Care Centers of America, and Life Care Centers of America, Inc. pray that the case presently pending against them in the Court of Common Pleas of Lorain County, Ohio, be removed to this Court and proceed according to law.



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Elyria, Lorain Medical Investors Limited
Partnership, Forrest Preston, Life Care Centers of
America, and Life Care Centers of America, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2018, a copy of the foregoing document was filed electronically and served pursuant to Civ. R. 5(b)(2)(E). Notice of this filing will be sent via operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

A handwritten signature in blue ink, appearing to read "Chris F. Mars", is written over a horizontal line.

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